

ENTERED

May 22, 2023

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE: INTERNATIONAL TERMINALS COMPANY, LLC, DEER PARK FIRE LITIGATION §
§ LEAD CASE NO. 4:19-CV-01460
§
§

ORDER ADOPTING REPORT AND RECOMMENDATION

This matter was referred to United States Magistrate Judge Dena Palermo to conduct all pretrial proceedings pursuant to 28 U.S.C. § 636. ECF No. 112. Pending before Judge Palermo were several motions filed by Defendants Intercontinental Terminals Company LLC (“ITC”), NSK Corporation, and NSK Ltd.’s (collectively, “NSK” and together with ITC “Defendants”) and Plaintiffs.

First, ITC’s motion to compel arbitration, to sever, and to dismiss and request for interim stay, ECF No. 589. On June 11, 2021, Judge Palermo filed a Report and Recommendation (“R&R”), recommending that ITC’s motion should be granted and that Plaintiff Hyundai Marine Fire Insurance’s (“Hyundai”) claims against ITC in Case No. 4:21-cv-497 should be severed from its claims against other defendants and that those claims should be dismissed. ECF No. 854. The time for filing objections has passed, and no objections were filed.

Second, Defendants filed motions to dismiss the claims of Plaintiffs who have failed to comply with Court orders regarding the submission of fact sheets. Defs.’ Mots. to Dismiss, ECF Nos. 1068, 1077. Judge Palermo ruled on those motions in two separate R&Rs. On April 29, 2022, Judge Palermo filed an R&R, recommending that Defendants motion to dismiss, ECF No. 1068, be granted in part. Judge Palermo recommended that the claims of Plaintiffs who failed to submit

fact sheets be dismissed without prejudice. ECF No. 1139. Subsequently, on June 24, 2022, Judge Palermo filed an R&R, recommending that Defendants' first motion, ECF No. 1068, be granted in part. Judge Palermo recommended that the claims of Plaintiffs who have failed to comply with the Court orders regarding the submission of fact sheets, in that they failed to include any claim information in their fact sheets and offer explanations for the deficiencies be dismissed. ECF No. 1194. Judge Palermo also recommended that Defendants' second motion, ECF No. 1077, be denied. *Id.* Judge Palermo's Report and Recommendation was subsequently amended to reflect the number of Plaintiffs who fall within her ruling. Am. R&R, ECF Nos. 1203 & 1238. The time for filing objections has passed, and no objections were filed.

Third, NSK filed a motion for summary judgment as to Plaintiffs' design defect and manufacturing defect product liability claims, ECF No. 1354, and Plaintiffs filed a motion to strike ITC's designation of NSK as Responsible Third Parties, ECF No. 1356. On April 6, 2023, Judge Palermo filed an R&R, recommending that NSK's motion be granted with respect to Plaintiffs' design defect claim against NSK Corp. and NSK Ltd., granted with respect to Plaintiffs' manufacturing defect claim against NSK Corp., and be denied with respect to Plaintiff's manufacturing defect claim against NSK Ltd. ECF No. 1423. The R&R also recommended that Plaintiffs' motion to strike be granted with respect to NSK Corp. and denied as to NSK Ltd. *Id.* The time for filing objections has passed, and no objections were filed.

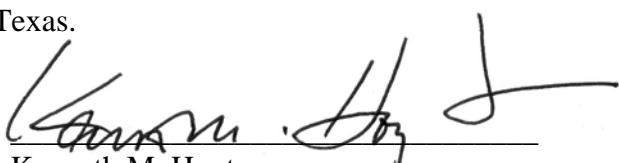
Finally, Defendants filed another motion to dismiss the claims of Plaintiffs who have failed to comply with Court orders regarding the submission of fact sheets. Defs.' Mot. Dismiss, ECF No. 1361. On April 26, 2023, Judge Palermo filed an R&R, recommending that Defendants' motion be granted and that the claims of Plaintiffs that were subject to the motion be dismissed with prejudice. The time for filing objections has passed, and no objections were filed.

Pursuant to Federal Rule of Civil Procedure 72(b), the Court has reviewed the Report and Recommendation for clear error. Finding no clear error, the Court adopts the Report and Recommendation, ECF Nos. 854, 1139, 1203, 1238, 1194, 1423, 1433, in their entirety. Accordingly, it is ORDERED that:

1. ITC's motion to compel arbitration, ECF No. 589, is GRANTED and Hyundai's claims against ITC in Case No. 4:21-cv-497 are severed from its claims against other defendants and DISMISSED WITH PREJUDICE.
2. Defendants' motion to dismiss, ECF No. 1068, is GRANTED with respect to those Plaintiffs who failed to include any claim information in their fact sheets and offer explanations for the deficiencies. Accordingly, Plaintiffs who failed to include any claim information in their fact sheets and defend against the motions to dismiss, as identified in Exhibit 1 to ECF No. 1238, are DISMISSED WITHOUT PREJUDICE.
3. Defendants' motion to dismiss, ECF No. 1077, is DENIED.
4. NSK's motion for summary judgment, ECF No. 1354 is GRANTED IN PART AND DENIED IN PART. Plaintiffs' design defect and manufacturing defect claims against NSK Corp. and Plaintiffs' design defect claim against NSK Ltd. are DISMISSED.
5. Plaintiffs' motion to strike ITC's designation of NSK as Responsible Third Parties, ECF No. 1356, is GRANTED IN PART AND DENIED IN PART. ITC's designation of NSK Corp. as a Responsible Third Party is STRICKEN.
6. Defendants' motion to dismiss, ECF No. 1361, is GRANTED. Plaintiffs' cases who failed to comply with the Court's orders regarding the submission of fact sheets, as identified in Exhibits A, ECF No. 1361-1 and B, ECF No. 1361-2, to ECF No. 1361, are DISMISSED WITH PREJUDICE.

It so ORDRED.

SIGNED on May 22, 2023, at Houston, Texas.



Kenneth M. Hoyt
United States District Judge